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PART III

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Recommended Partial Decision

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1002]

[Docket No. AO-71-A71]

MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Recommended Decision (Partial) and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the New York-New Jersey Federal milk marketing order (Order 2), based on industry proposals considered at a public hearing in February 1976. The principal changes would adjust the prices for milk throughout the production area to more nearly reflect the costs incurred by handlers in assembling milk from farms and transporting it to plants for processing. Another change would institute a late-payment charge on overdue payments by handlers to the market administrator to encourage prompt payments for milk. Also, a number of minor changes would be made in the classification of milk according to its use to reflect current marketing practices.

DATE: Comments are due on or before May 11, 1977.

ADDRESS: Comments (6 copies) should be filed with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Willard H. Blanchard, Deputy Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-5661.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing, Issued January 9, 1976; published January 14, 1976 (41 FR 2092).

Extension of Time for Filing Briefs, Issued April 15, 1976; published April 21, 1976 (41 FR 16660).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the New York-New Jersey marketing area, and of the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before May 11, 1977. Six copies are required for this proceeding. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, as amended, were formulated was conducted at New York, New York, on February 17-20, 1976, and at Syracuse, New York, on February 23-26, 1976, pursuant to notice thereof.

The material issues on the record of the hearing relate to:

1. Whether changes should be made in the following provisions for purposes of permitting a more equitable competitive situation, on both an intramarket and intermarket basis, for Order 2 handlers:
   a. Class I price differential.
   b. Transportation differentials.
   c. Pool transportation credit to handlers for bulk tank milk.
   d. Tank truck service charge.
   e. Direct delivery differential.
2. Whether the classification provisions should be changed with respect to the following:
   a. Milk moved between Order 2 pool plants and plants regulated under an order administered solely by the State of New York.
   b. Bulk milk received at an Order 2 pool plant from a plant regulated under another Federal order.
   c. Milk dumped, disposed of for animal feed, or lost under extraordinary circumstances.
3. Whether the procedure for classifying shrinkage should be changed.
4. Whether the order should provide for charges on overdue accounts.

This decision deals with all issues except issue No. 3. The latter issue is reserved for a later decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Modification of transportation allowances.* For the purpose of permitting a more equitable competitive situation for regulated handlers, on both an intermarket and intramarket basis, and to provide a more stable market for producers, the New York-New Jersey order (Order 2) should be amended in the following manner:

The present Class I differential of $2.40 that is applicable at the 201-210 mile zone should be reduced to $2.25.

The transportation differential rate of 1.2 cents per hundredweight for each 10 miles that is now used to adjust the Class I and uniform prices for location should be increased to 1.5 cents for each 10-mile zone more distant than the 201-210 mile zone, and to 1.8 cents for each 10-mile zone less distant than the 201-210 mile zone. With the new base zone differential, this would result in a Class I differential at New York City of $2.61.

The current 10-cent per hundredweight pool transportation credit to handlers on receipts of bulk tank milk allocated to Class II uses should be replaced with a 15-cent pool credit on all farm bulk tank milk received by handlers.

Handlers should be permitted to negotiate with producers or their cooperatives a tank truck service charge of up to 15 cents per hundredweight (now limited to 10 cents) with respect to any farm-to-first plant hauling costs not recovered through the 15-cent pool transportation credit on farm bulk tank milk.

The present 5-cent direct delivery differential should be increased to 15 cents per hundredweight. The differential should continue to be applicable to all milk of producers located within the 1-70 mile zone.

No provision should be made in the order for a "metropolitan transfer credit" or an "upstate fluid differential," as was proposed by several cooperatives, or for pricing milk at the plant where first received, as several handlers urged.

a. *Summary of hearing proposals.* The basic purpose of the hearing was to consider proposals that were designed to improve the competitive situation for Order 2 handlers located in or near the major metropolitan area of the market (New York City and nearby heavily populated areas) who are engaged in the distribution of Class I milk. Witnesses contended that in recent years the cost of hauling milk from farms to plants has increased substantially. They indicated that this has resulted in a significant deterioration in the ability of metropolitan area handlers to compete effectively with handlers in neighboring markets, particularly the Middle Atlantic Federal order market, and with various handlers in the Order 2 market.

With respect to the intermarket competition, witnesses claimed that the adverse situation is attributable largely to the unique procedure for pricing producer milk under Order 2 relative to other orders. It was pointed out that under Order 2 bulk tank milk from producers is priced essentially at the location of the farms where received by handlers. Witnesses alleged that this has caused the burden of the higher hauling costs to fall largely on handlers, including cooperatives operating in a handler capacity, who move the milk from the farms to the major consumption center of the market. The witnesses stressed that in contrast handlers in other markets have not borne the brunt of the increase in hauling costs. They pointed out that under other orders producer milk is priced at the first plant at which it is received. The witnesses claimed that in those cases where the producers deliver their milk directly to the city distributing plants, the higher hauling costs have been absorbed largely by the individual producers rather than by the handlers receiving their milk.

Witnesses contended that the disparity in the cost of milk to handlers under Order 2 and other orders has resulted in a substantial loss of Class I sales by Order 2 handlers to the other markets. They claimed that corrective action is

essential to the long-run interests of producers in the New York-New Jersey market.

With respect to the alleged intramarket competitive problems, it was claimed that the impact of the increased hauling costs on Class I distributors in the major metropolitan area has varied, depending on each distributor's source of milk. Witnesses contended that the metropolitan area handlers who rely on supply plant milk are experiencing much higher procurement costs than those receiving milk at their distributing plants directly from farms. This, they claimed, is because of the costs associated with reloading milk at supply plants and moving it long distances to the metropolitan area, plus using a transportation differential rate under the order that does not reflect actual hauling costs.

Cooperative associations and proprietary handlers offered a number of proposals which they believed would minimize the competitive problems of which they complained. Six major proposals dealing with this issue were made by two principal producer organizations in the market. The basic thrust of the proposals was to shift the assembly and hauling costs for milk from handlers to producers. Various modifications of these proposals were proposed by several proprietary handlers to accommodate their individual operations. A number of other producer groups in the market, including a third major producer organization, opposed any changes in the order relative to this issue.

Two of the six major proposals relate to the recovery of costs associated with picking up farm bulk tank milk and moving it to the first plant of receipt. One proposal would provide handlers with a 15-cent per handredweight pool credit on all such milk. A 10-cent pool credit currently applies just on Class II bulk tank milk. The other proposal would increase the maximum negotiable tank truck service charge, which is now 10 cents per hundredweight, to 25 cents. Together, these two proposals would make it possible for handlers to recover up to 40 cents per hundredweight of the farm-to-first plant hauling cost for bulk tank milk—15 cents through the pool credit and the remainder through negotiations with the producer or his cooperative.

Proponents supported a pool credit for handlers of farm bulk tank milk as an appropriate mechanism for recovering from producers a portion of the farm-to-plant hauling costs. They maintained that a 15-cent credit would reflect the minimum cost incurred by handlers in picking up bulk tank milk at the farm. They took the view that a pool credit could be easily administered, that it would avoid confusion among producers since it would affect all bulk tank producers uniformily, and that it would contribute to market stability.

Spokesmen for the proposals indicated that for most handlers the 15-cent pool credit would not sufficiently reimburse handlers for the farm-to-plant hauling costs incurred and that additional amounts should be recoverable through a negotiated charge to producers. It was contended that setting the maximum negotiable charge at 25 cents per hundredweight would permit handlers to recover most, if not all, of such costs. Witnesses stated that limiting negotiated deductions for hauling to 25 cents per hundredweight is necessary to ensure that handlers do not negotiate deductions in excess of actual hauling costs. Also, it was claimed that a limit, compared to unlimited deductions, would provide an incentive for handlers to assemble milk in the most efficient manner.

Two other major proposals relate to the recovery of costs for long-haul shipments of bulk milk. One proposal would increase the present 1.2-cent transportation differential rate to 1.5 cents per hundredweight for each 10-mile zone. The other would provide a 25-cent per hundredweight pool credit to handlers on Class I milk originating beyond the 1–140 mile zone and transferred in bulk, directly from farms or from plants, to plants located within the 1–65 mile zone. In combination, these proposals are intended to permit handlers to recover the average cost of shipping bulk milk from country locations to distributing plants in the major metropolitan areas for Class I use.

In support of these proposals, witnesses claimed that the long-distance hauling rates now being charged in the market reflect a "variable" hauling cost of 1.8 cents per hundredweight per 10 miles, and "fixed" hauling costs totaling 19 cents per hundredweight.[1] Although supporting the 1.8-cent variable rate, proponents indicated that their proposal was couched in terms of a 1.5-cent variable rate since this is the rate commonly reflected in other orders. For a 200-mile shipment, such as from the base zone to the New York City area, witnesses indicated that a 1.5-cent transportation differential rate would cover 30 cents of the average 55-cent actual hauling cost for this distance.

Proponents contended that the total cost of long-distance shipments, and not just the variable cost, should be reflected in the order's pricing provisions if the metropolitan area handlers are to be competitive with handlers in other markets. Accordingly, it was proposed that handlers be given a 25-cent "metropolitan transfer credit" for the purpose of covering that portion of the 55-cent hauling cost for a 200-mile shipment not reflected in the adjustment of prices for location, i.e., 25 cents. The 25-cent credit would cover the remaining 6 cents of the actual 36-cent variable cost for 200 miles not covered by the 1.5-cent transportation differential rate, plus the 19-cent fixed cost. Proponents noted that if the zone differentials were to be established at 1.8 cents per 10 miles a metropolitan transfer credit reflecting only the 19-cent fixed cost would be appropriate.

At the hearing, proponents modified their initial proposal to provide for a "feathering" of the metropolitan transfer credit. They suggested that a credit of 10 cents per hundredweight be given for milk transferred to metropolitan area plants from the 91–100 mile zone, 15 cents for the 101–120 mile zone, 20 cents for the 121–140 mile zone, and 25 cents for milk shipped from more distant areas.

Another of the major proposals would increase the present 5-cent direct delivery differential to 10 cents per hundredweight and would extend the zone of application to include all pool milk received from farms within the 1–110 mile zone. Witnesses indicated that this proposed change is intended to more nearly equate the cost of nearby milk moved directly from farms to plants in the major metropolitan area for Class I use with the cost of Class I milk obtained by handlers from country plants. It was claimed that the handler receiving direct-ship milk avoids reloading costs that attach to supply plant milk. It was suggested that in view of current reloading costs the direct delivery differential perhaps should be as much as 13 cents per hundredweight. A witness also indicated that a larger direct delivery differential payable to the nearby producers would partially offset the incentive that such producers now have for shifting to neighboring markets where higher blend prices are being paid.

The sixth major proposal would require distributing plants located outside the 1–65 mile zone to pay to the pool an "upstate fluid differential" of 10 cents per hundredweight on all Class I milk received from farms located outside the 1–110 mile zone. It was indicated that such distributing plants normally receive milk directly from producers and thus do not experience the reloading costs incurred by many of the distributors in the major metropolitan area of the market who rely on supply plant milk. The upstate fluid differential, it was claimed, would tend to equalize the procurement costs of those handlers in the outlying areas of the market with the cost incurred by competing handlers in the major metropolitan area.

At the hearing and in their briefs, proprietary handlers took varying positions with respect to the six major proposals of the producer groups. As would be expected, handlers generally supported those proposals—such as the 15-cent pool credit on bulk tank milk and the 25-cent negotiable tank truck service charge—that would lower their procurement costs and thus enhance their competitive position in the retail market. Some preference was expressed, however, for either holding the nego-

[1] "Fixed" hauling costs are the costs associated with the ownership of the trucking equipment and any related maintenance facilities. Such costs include depreciation, licenses, interest, taxes and insurance. "Variable" hauling costs are the costs associated with the over-the-road operation of the trucking equipment, such as gas, tires and repairs. The estimates of fixed and variable costs that were placed in the record were determined from a regression analysis of various hauling rates applicable in the New York-New Jersey market.

tiable charge at the present maximum level of 10 cents or eliminating the charge and increasing the pool transportation credit to something more than the 15 cents proposed by cooperatives. It was claimed that negotiable charges are an unsatisfactory arrangement since not all handlers in the market negotiate such charges, thus causing disparate procurement costs among handlers, and because producers resist such charges.

Handlers also expressed support for a higher transportation differential rate under the order, although they were not in agreement on the specific rate. Some handlers urged the 1.8-cent rate proposed by cooperatives, while others favored a 1.5-cent rate on the basis that any higher rate would be out of line with location adjustment rates generally applicable under other Federal orders.

Several handlers opposed the adoption of an "upstate fluid differential" on the basis that the affected distributing plants were having no difficulties in attracting adequate milk supplies and that the differential thus would unjustifiably increase the cost of Class I milk at such plants. Opposition was expressed also against the use of a direct delivery differential. It was claimed that the differential adds to the misalignment of milk costs between Order 2 handlers and handlers in the Middle Atlantic Order 4 market.

There was considerable disagreement among handlers regarding the cooperatives' proposed "metropolitan transfer credit." This stemmed largely from the varying impact that such a credit would have on different handlers because of their location or method of operation. The various handler positions included having no such credit, having it apply to transfers of both packaged and bulk milk, "feathering" the credit, precluding the movement of any milk subject to the credit back into the outlying areas of the market, and reducing the Class I price to reflect transportation costs rather than applying a credit.

Several handlers took the position that the problems of intermarket competition arising from unequal procurement costs could best be resolved by replacing the Order 2 farm point pricing arrangement with the plant pricing concept used under the other orders. In this regard, one group of handlers proposed that milk from a producer be priced at the pool plant located nearest the producer's farm. A corollary proposal would permit handlers to negotiate with producers or their cooperatives a tank truck service charge of up to 30 cents per hundredweight.

Another handler, who operates a distributing plant in northern New Jersey, urged that milk from producers be priced at the first plant where it is received, as under the Middle Atlantic order. According to the handler's spokesman, such action, along with an increase in the transportation differential rate to 1.8 cents per 10 miles, would effectively deal with three major problems that he identified. The first was the misalignment of costs for Class I milk between Orders 2 and 4. He contended that the handler he was representing has had to lower prices to remain competitive with Order 4 handlers who distribute milk in the North Jersey area. Such reductions, he claimed, have spread to other areas of the Order 2 market and thus have resulted in chaotic conditions, reduced margins, elimination of profits, reduced volume, and higher unit costs for Order 2 plants. These conditions occurred, in his view, because the differing pricing provisions of the two orders have resulted in unequal changes in the cost of milk to handlers during the time of rapid inflation of milk transportation and handling costs.

A second problem that would be alleviated under plant pricing, according to the witness, is that inflation also has caused a misalignment of Class I prices within the Order 2 market. In this connection, he held that intramarket alignment should be achieved by fixing the basic Class I price at the major consumption area of the market and then reducing the price at outlying areas of the market to reflect the costs of hauling milk to the consumption center from country plants.

Third, the spokesman contended that inflation will continue, with milk transportation and handling costs thus increasing further in the future. Such future economic conditions, he claimed, would not be recognized under the cooperatives' proposals, and the adoption of the proposals thus would not prevent future price alignment problems.

Strong opposition to any changes in the order's transportation allowances was indicated by a spokesman for a number of cooperatives, including one of the principal cooperatives in the market. The spokesman expressed the cooperatives' view that changing the order to impose additional transportation costs on producers, either directly through negotiable deductions or indirectly through pool credits for handlers, would undermine the principle of farm point pricing in this market and would lower returns to producers. The spokesman stressed the cooperatives' basic position that the costs of moving bulk milk from farms to plants are marketing costs that should be borne by the market and not by producers.

These cooperatives opposed any order changes that would provide for pricing milk at plant locations rather than at the farm. It was contended that such a change would subject producers and handlers alike to the abuses and administrative difficulties that prevailed prior to the adoption of farm point pricing. The cooperatives also opposed increasing the transportation differential rate from the present level of 1.2 cents per 10 miles on the basis that the data submitted by proponents to support the proposed increase were based on hauling charges higher than those that generally prevail in the market. The proposed metropolitan transfer credit also was opposed on the basis that it would impose an arbitrary cost on the pool and thus on producers. The cooperatives' spokesman also expressed the view that there are potential inequities in the application of the proposals with regard to the appropriate zone or zones to which the credit would apply. Moreover, the cooperatives held that order provisions covering only the variable costs of transportation, as provided in most orders, tend to provide a degree of restraint on unneeded movements of milk from supply plants and should be continued.

The spokesman for the opposing cooperatives contended that the proposed package of changes may not, in fact, improve the alignment of Class I between Order 2 market and surrounding markets. He indicated that any savings in the cost of Class I milk that handlers might gain from the proposals would be used by labor unions as a basis for bargaining for higher benefits. Thus, he claimed, the handlers would not be able to pass the full Class I cost savings on to the marketplace, with the result that their ability to regain or expand Class I sales, which was the alleged purpose of the proposals, would be lost or greatly diminished. It was indicated that the risk of producers receiving lower returns without accomplishing the intent of the proposals is not one that the opposing cooperatives are willing to take.

Thirty-six individual dairy farm operators testified during the course of the hearing. Only two indicated support for any of the proposals that would result in dairy farmers paying a higher portion of the milk transportation costs. The others strongly opposed such proposals. They claimed that dairy farmers cannot afford to pay more for milk hauling, and that handlers should bear the costs of transportation since the milk is under their control once it is picked up at the farm.

Spokesmen for two handlers also expressed opposition to any actions that would reduce returns to producers. Their concern was that such actions would jeopardize their producer milk supplies because dairy farmers would seek higher returns by shifting their milk to outlets in other markets.

It should be noted that two proposals included in the hearing notice were abandoned by the proponent, and no other support was offered at the hearing for such proposals. One would allow handlers to recover the full farm-to-first plant hauling cost on bulk tank milk if authorized by the producer. The other proposal would increase the transportation differential rate from 1.2 cents to 1.7 cents per each 10-mile zone.

b. *The need for order changes.* It is clear that the present provisions of the New York-New Jersey order are not compatible with current marketing conditions. Major increases in the costs of assembling and transporting milk during the last several years have occurred without corresponding changes in the various transportation allowances under the order. As a result, various handlers under Order 2 are experiencing a deteriorating competitive situation in the Class I (fluid milk) market. Corrective action is essential if the order is to fulfill its

purpose of providing stable and orderly marketing conditions for producers and for the handlers through whom they market their milk.

A brief description of the New York-New Jersey market will help place the issue at hand in a better perspective. By any measure, the Order 2 market may be considered as large. In 1975, approximately 20,000 dairy farmers supplied about 786 million pounds of milk monthly for a marketing area population of more than 20 million persons.[2] Although the marketing area includes 39 counties and portions of 12 other counties in New York and New Jersey, nearly 80 percent of the population is concentrated in a relatively small area comprised of New York City and adjacent areas in New York and New Jersey. This heavily populated area extends outward roughly 60 to 70 miles from New York City, and constitutes the major milk consumption center in the Order 2 market.

Besides the major New York City metropolitan area, there are several other relatively large consumption centers at various locations in the New York portion of the marketing area. These include Elmira (metropolitan area population in 1975, 100,100), Binghamton (population 266,700), the Albany-Schenectady-Troy area (population 799,000), Syracuse (population 647,800), and the Utica-Rome area (population 334,900), all of which are located in the outlying production areas of the market. Milk processors that operate in these outlying areas compete with handlers in the major metropolitan area for milk supplies.

Processing plants, where milk is pasteurized and bottled, also are concentrated in the major metropolitan area. In March 1975, there were 28 processing plants located in the 1–10 mile zone. Within the 1–70 mile zone, 44 plants processed and distributed fluid milk, which was over half of the fluid milk processing plants on the Order 2 market. These 44 plants received from farms or other plants 81 percent of the producer milk utilized in the market for fluid purposes that month.

As would be expected, country supply plants are located primarily in the more distant areas of the milkshed. Only 7 such plants were located within 140 miles of New York City in March 1975, whereas 47 were located beyond 140 miles. Of these, 37 were located in the 141–240 mile zone, which gives an indication of the distance that milk must be moved in supplying the fluid milk requirements of the processors in the New York City area.

Dairy farmers who supply milk for the Order 2 market are widely dispersed over a large area. In March 1975, milk associated with this market was produced in the States of New York, New Jersey, Pennsylvania, and Maryland. Some producers' farms are located more than 400 miles from New York City.

Most of the Order 2 milk supply (more than 93 percent in 1975) originates in areas beyond the market's 1–100 mile zone. Practically all of the distant milk that is used in Class I at the metropolitan area distributing plants is first assembled at country plants and then hauled to the distributing plants in large over-the-road trucks. Metropolitan area plants also receive some milk directly from farms, most of which are located in the nearby production areas. In March 1975, 19 percent of the milk received for fluid use at these distributing plants moved directly from farms to such plants. The remainder was obtained through country plants.

Two basic concerns exist. One is the disparity in milk costs between those metropolitan area handlers using supply plant milk and those using direct-ship milk for meeting their Class I needs. The other concern is the disparity in Class I milk costs between metropolitan area handlers under Order 2 and handlers regulated under the Middle Atlantic order. In both cases, the increased assembly and transportation costs have seriously distorted the competitive relationships among the handlers involved. This may be shown through a brief description of the pricing arrangements for Class I milk that are applicable to such handlers.

Under Order 2, milk received from bulk tank producers is priced essentially at the location of the farm, with such pricing commonly referred to as "farm point pricing." Under this arrangement, all milk that originates in the same township is priced at the zone price applicable to that township. For pricing purposes, the township's location is based on the point in the township that is nearest the market's major consumption center. Such pricing applies to about 97 percent of the producer milk on the market. The remainder of the milk is shipped in cans and is priced at the location of the plant at which the milk is first received. Unless indicated otherwise, the discussion on transportation allowances will be in terms of farm bulk tank milk.

The Class I prices at the various farm locations vary basically according to the nearness of the farms to New York City. For example, the Class I price at farms in the 101–110 mile zone is 12 cents per hundredweight less than the Class I price at New York City. For farms in the 201–210 mile zone, the Class I price is 24 cents less. Prices are adjusted for location by the order's transportation differentials, which currently apply at a rate of 1.2 cents for each 10-mile zone. This rate is intended to reflect the "variable" cost of hauling milk over long distances.

The metropolitan area handler normally pays most of the costs associated with the collection of the milk at the farms and its movement to his processing plant. This is so whether he moves the milk himself or whether another handler, such as a cooperative, performs this service, since the latter customarily attempts to pass on all related costs to the processing handler. The current order does permit hauling deductions from producer payments of up to 10 cents per hundredweight on all farm bulk tank milk, if authorized by the producer or his cooperative association. In December 1975, authorized deductions were being made for about 75 percent of the bulk tank producers, in most cases probably at the maximum rate.[3] Thus, the basic cost of Class I milk to metropolitan area handlers is the Class I price applicable at the farm (township) location plus the cost of moving the milk, either directly or through a supply plant, to the processing plant, less any hauling deduction. Although additional handling charges for other services usually apply in the case of milk received from cooperatives, such charges are disregarded for purposes of this discussion.

An additional cost applies in the case of those handlers who receive milk from forms located within the 1–70 mile zone. The order provides that handlers shall pay producers a so-called direct delivery differential of 5 cents per hundredweight on all such milk, whether in bulk or in cans.

It is readily apparent that under this pricing arrangement any increases in assembly and transportation costs will have a direct impact on the procurement costs of metropolitan area handlers. Because milk is priced at the farm location, and because the transportation allowances under the order are fixed, any additional assembly and transfer costs must be borne by the processing handler. Actually, even prior to the recent cost increases, the present order provisions did not permit metropolitan area handlers to recover through various price allowances the full cost of getting milk from the farm to their processing plants for Class I use. Although the farm-to-first plant hauling costs were higher, negotiable hauling deductions have been limited to 10 cents.[4] In addition, when the present Class I transportation differentials were adopted, the total cost of hauling milk over a 200-mile distance was about 34 cents per hundredweight.[5] Only 24 cents, which was considered to be the "variable" cost for this distance, was reflected in the transportation differentials. Also, reloading costs at supply plants have not been reflected in the price structure of the order except as they might be offset from a competitive standpoint by the direct delivery differential. Thus, the problem of recovering procurement costs has existed for some time. The recent increases in hauling

[2] Official notice is taken of CURRENT POPULATION REPORTS, Population Estimates and Projections, Series P–25, No. 631 (issued July 1976), and Series P–26, No. 75–30 (issued October 1976), published by the Bureau of the Census, U.S. Department of Commerce.

[3] Official notice is taken of The Market Administrator's Bulletin, Quarterly Statistical Issue (A), volume 36/1976, no. 4, issued by the Market Administrator for the New York-New Jersey Federal order.

[4] Official notice is taken of the Assistant Secretary's decision on proposed amendments to the New York-New Jersey order and certain other orders that was issued on October 5, 1970 (35 FR 15927).

[5] Official notice is taken of the Assistant Secretary's decision on proposed amendments to the New York-New Jersey order that was issued on June 9, 1959 (24 FR 4836).

costs, however, have greatly aggravated this problem for handlers.

The average farm-to-first plant hauling cost for bulk tank milk is now 30 cents per hundredweight. The maximum recovery of such costs for milk used in Class I is 10 cents, which must be negotiated with the producer or his cooperative. Until recently, relatively few deductions were being authorized. The supply plant transfer costs are now averaging 12 cents per hundredweight. These costs are borne by the metropolitan area handler who receives such milk. The only offsetting factor is the 5-cent direct delivery differential applicable to nearby direct-ship milk. The average cost of hauling milk between plants is 55 cents per hundredweight for a 200-mile distance. The order establishes a difference in Class I prices for this distance of only 24 cents. (These various costs will be described in greater detail at a later point in the decision.)

Metropolitan area handlers must either absorb these various costs not recoverable from producers through the order or pass them on to consumers. To the extent that competitive conditions permit, handlers can be expected to resort to the latter procedure. This point, however, leads to the crux of the entire issue.

Because of differences in their procurement arrangements, not all Order 2 handlers in the major metropolitan area experience the same raw milk costs. Such costs are substantially less for those handlers using nearby direct-ship milk than for those using supply plant milk. The handlers using direct-ship milk thus are in a favored position in competing for sales outlets.

On the basis of cost data presented at the hearing, a comparison of the average cost of Class I milk to metropolitan area handlers from various sources may be made. For this purpose, the costs are expressed in terms of the Class I differential plus other costs, rather than in terms of the Class I price (i.e., the basic formula price for the second preceding month plus the Class I differential) plus other costs. The exclusion of the basic formula price does not affect the validity of the cost comparisons (for either intramarket or intermarket purposes) since this cost factor is the same for all handlers.

Table 1 sets forth an example of the different procurement costs incurred by certain handlers. The average differential cost to a New York City handler for Class I bulk tank milk obtained directly from farms in the 51–60 mile zone is $2.98 per hundredweight. This consists of the present Class I differential of $2.58 that is applicable at the township pricing points in that zone, a 35-cent farm-to-plant hauling cost, and the 5-cent direct delivery differential that the handler must pay to the producers. By comparison, the average differential cost for Class I milk obtained by a city handler from a supply plant located in the 201–210 mile zone is $3.37 per hundredweight. The cost make-up in this case includes a base zone Class I differential of $2.40, a farm-to-first plant hauling cost of 30 cents, a supply plant transfer cost of 12 cents, and a long-distance hauling cost of 55 cents. In either situation, the cost of such milk can be reduced by 10 cents per hundredweight if the maximum hauling deduction is authorized by producers.

TABLE 1.—*Examples of Procurement Costs Incurred by New York City Handlers for Class I Bulk Tank Milk Obtained from Selected Sources (excluding basic formula price)*

[In dollars per hundredweight]

	Direct-ship from 51–60 mile zone	Supply plant in 201–210 mile zone
Class I differential at zone	2.58	2.40
Farm-to-first plant hauling cost	.35	.30
Supply plant transfer cost		.12
Over-the-road hauling cost		.55
Direct delivery differential	.05	
Total cost	2.98	3.37
Authorized hauling deduction	−.10	−.10
Net cost	2.88	3.27

Handlers obtaining milk from locations in the market different from those shown in Table 1 are experiencing slightly different procurement costs. However, the examples portrayed in Table 1 are representative of the general cost situation being faced by city handlers.

Although this difference between the cost of direct-ship milk and supply plant milk supposedly would induce handlers to rely more on direct-ship milk, this generally has not been the case. This may be attributed to the fact that metropolitan area distributors must obtain substantial quantities of milk from distant production areas since nearby milk supplies are inadequate. It is not feasible in most cases to move milk directly from farms in the distant areas to metropolitan area plants without any reloading. Generally, the trucks that must be used for picking up bulk tank milk at the farms are too small for economical long-distance hauling. Also, haulers who assemble milk from farms are limited in the distance they can move the milk since their trucks must be available each day for picking up milk at farms. Since Order 2 handlers currently must pay most of the cost of assembling and transporting milk, it must be presumed that the handlers have been using the most economical procurement arrangements.

A comparable competitive problem exists for Order 2 handlers relative to Order 4 handlers in the Middle Atlantic market. A number of Order 4 handlers in the Philadelphia and southern New Jersey area distribute Class I milk in the northern New Jersey portion of the Order 2 market in competition with Order 2 metropolitan area handlers. The Order 4 Class I differential, which applies at the plant where the milk is first received, is $2.78 at Philadelphia. Handlers in the Philadelphia and South Jersey area also must pay producers a direct delivery differential of 6 cents. Thus, the differential cost of Class I milk under Order 4 for these handlers is $2.84 per hundredweight.

From the data in Table 1, it may be seen that the Order 2 metropolitan area handler using supply plant milk is in a relatively poor competitive posture in terms of his raw milk costs. Assuming that the 10-cent negotiable hauling deduction is being made, his milk cost is averaging 43 cents per hundredweight greater than the cost of milk for the Order 4 handlers. The Order 2 handler using direct-ship milk is in a much better position relative to Order 4 handlers, with the Order 2 cost averaging only 4 cents per hundredweight more. However, it should be noted that in terms of the class prices applicable at the two cities, which are about 100 miles apart, the Class I price at New York City is 14 cents lower than the Class I price at Philadelphia. Thus, the 4-cent cost difference, although appearing to be reasonably satisfactory, does not properly reflect the full cost difference that has been intended under the present pricing provisions.

Because of their lower raw milk costs, Order 4 handlers are in a position to establish lower resale prices for fluid milk than their competitors in the Order 2 market, particularly those metropolitan area handlers using supply plant milk. Thus, as in the intramarket competitive situation described earlier, Order 2 handlers using supply plant milk are, in this situation also, seriously disadvantaged in competing for fluid milk sales. As noted earlier, about 80 percent of the Class I milk used by Order 2 metropolitan area handlers is received from supply plants.

Although the record provides no specific data regarding hauling costs in the Order 4 market, it may be presumed that the increased costs experienced by haulers of milk in the Order 2 market have been experienced in the Middle Atlantic market as well. The inflationary trend in the economy that is associated with such increases has been a national phenomenon. However, handlers in the two markets have been affected in significantly different ways by these cost increases. This is because of the differences in the pricing arrangements and procurement methods in the two markets.

In the Order 4 market, producer milk is priced at the location of the plant where the milk is first received. Since most of the milk is moved to city processing plants directly from farms, most producers receive the city price for their milk. Under this pricing arrangement, however, the cost of getting the milk to the city is borne by the producers. Any increases in hauling costs likewise are absorbed by producers. Handlers' procurement costs are not affected by the hauling costs.

In the Order 2 market, the current pricing arrangement and the extensive reliance on supply plants have caused the burden of increased hauling costs to fall largely on handlers. The higher hauling costs have been reflected not in lower re-

turns at the farm level, as in the case of the Order 4 market, but in higher costs for milk at the distribution center. As a result, Order 2 handlers in the metropolitan area are not able to compete on a comparable cost basis with handlers in the nearby Middle Atlantic market for Class I sales.

As already noted, there is substantial competition between Order 2 and Order 4 handlers for Class I sales in the North Jersey portion of the Order 2 market. This is a relatively heavily populated area located between New York City and Philadelphia. Total consumption of fluid milk products in this area in 1975 was estimated to be nearly 1.4 billion pounds, which was equivalent to 29 percent of the Order 2 Class I milk that year.

Data presented at the hearing indicate that handlers under other orders have substantially increased their Class I dispositions in North Jersey over the past several years. In 1969, such sales amounted to 194 million pounds. A preliminary estimate of such sales in 1975 was 349 million pounds, an increase of 79 percent. In 1975, such dispositions of fluid milk products by other order handlers comprised 25 percent of the estimated fluid milk consumption in North Jersey. This was up from 13 percent in 1969. It should be noted that total consumption in this area declined by 7.5 percent during this 1969–1975 period. Although the record does not indicate how many other orders were involved in these intermarket sales, data for 1973, 1974 and 1975 indicate that most of the other order sales were by Order 4 handlers. Because North Jersey adjoins the Middle Atlantic marketing area, it is reasonable to presume that most of the other order sales in this area in earlier years also were by such handlers.

This major shift of Class I sales in North Jersey from Order 2 handlers to Order 4 handlers cannot be attributed entirely to the rather significant advantage that Order 4 handlers have on their raw milk costs. Nevertheless, it is reasonable to conclude that this was a major contributing factor in the changing sales pattern for this area.

Although the increased hauling costs have been absorbed by handlers rather than producers, Order 2 producers nevertheless are having their returns reduced as a result of the shift in Class I sales in North Jersey to Order 4 handlers. This is because the lost sales mean less milk being used in Class I, which in turn results in lower blend prices.

The discussion on the need for order changes has been limited thus far to the impact of increased hauling costs on the cost of Class I milk. Because of the order's pricing system, the competitive position of those handlers processing Class II milk also is affected by the higher transportation costs. Although much less attention was focused on this issue at the hearing, handlers of Class II milk are always very much concerned that their cost of raw milk be comparable with that of competing processors. This is particularly important for processors of butter, nonfat dry milk and hard cheese. Such products are sold in a national market and the prices of these products are fairly uniform across the country. Thus, processors have little opportunity to pass on to the buyers of these products any procurement costs not generally experienced by all Class II processors.

Since most of the Class II milk is processed at country plants, the basic concern of handlers is the cost of moving Class II milk from the farms to these plants. Such cost is now averaging 30 cents per hundredweight. The order permits a maximum recovery from producers of 20 cents As indicated, handlers may negotiate hauling deductions of up to 10 cents per hundredweight on all bulk tank milk. In addition, handlers receive a 10-cent transportation credit form the pool on all receipts of bulk tank milk used in Class II. Based on average costs, Class II processors thus must absorb at least 10 cents of the farm-to-plant hauling costs.

In conclusion, the record amply demonstrates that the pricing provisions of the order are not in harmony with the current market situation. Such provisions do not reflect the differences in value that milk currently has to handlers at various locations and under various handling arrangements. The value that the order attaches to milk affects, of course, the degree to which Order 2 handlers are able to compete effectively with each other and with handlers regulated under other orders. Thus, revision of the Order 2 pricing provisions is essential if orderly and stable marketing conditions for handlers and producers in the New York-New Jersey market are to exist.

A cooperative association urged in its brief that a decision on the proposals under consideration be delayed to permit further study of the existing marketing problems. The cooperative's position was that the only guaranteed result of the proposals would be a reduction in the prices that producers receive for their milk. This would be adverse to producers, it was claimed, in view of spiraling milk production costs.

A similar delay was requested in its brief by a County Board of Agriculture, which expressed opposition to the proposals "until such time that further study and better proposals (may) be made so that the farmers' blend price is not lowered to subsidize the cost of milk handling" by cooperatives. It was also claimed that the hearing was called without farmers having adequate time to determine the effect of the proposals.

A decision in this proceeding should not be delayed pending further study of the issues and the development of other proposals. The record indicates that there are significant marketing problems that require amendments to the order. The record provides an adequate basis for the proposed amendments adopted herein and any further delay in their implementation would not carry out the purposes of the Act.

c. *Order modifications.* As outlined earlier, hearing witnesses supported two basic approaches to resolving the competitive problems of Order 2 handlers. One is the continuation of farm point pricing plus a number of changes in the order's transportation allowances. The other approach is the replacement of farm point pricing with plant pricing and a revision of the transportation differentials.

Farm point pricing has been used as the basis for pricing milk in the New York-New Jersey market since 1961. In the absence of a compelling need for the use of plant pricing, it appears reasonable to recognize the broad support by producers for farm point pricing. As noted, support for plant pricing was limited to several proprietary handlers. Therefore, it is concluded that milk received from producers should continue to be priced under the order at the township location of their farms.

The continued use of farm point pricing must be accompanied, however, with major changes in the order's pricing provisions if the present disparity in procurement costs for various metropolitan area handlers is to be minimized. In the Order 2 market, the recent increases in assembly and transportation costs have not been passed back to producers as in the Middle Atlantic market where milk is priced at the plant of first receipt. Thus, relative to the milk received by Order 4 handlers, the milk of Order 2 producers is over-priced in terms of its value to Order 2 handlers in the market's major metropolitan area. Also, within the Order 2 market, procurement costs for supply plant milk have increased much more than for milk received directly from farms. Such increases have been borne by the metropolitan area handlers.

Thus, relative to the direct-ship milk, supply plant milk is over-priced in terms of its value to Order 2 metropolitan area handlers. Accordingly, in recognition of both situations, the price of milk throughout the Order 2 milkshed should be reduced to reflect the decline in the value of such milk to handlers in the metropolitan area. The order changes considered necessary to implement this concept are discussed under the following subheadings.

Pool transportation credit and tank truck service charge. The current 10-cent per hundredweight pool transportation credit to handlers of Class II bulk tank milk should be replaced with a 15-cent pool credit on all farm bulk tank milk received by handlers. In addition, handlers should be permitted to negotiate with producers or their cooperatives a tank truck charge of up to 15 cents per hundredweight, rather than 10 cents as at present, with respect to any farm-to-first plant hauling costs not recovered through the pool transportation credit.

Under farm point pricing, handlers must have an opportunity to recover the farm-to-first plant hauling costs for bulk tank milk if they are to be competitive with handlers in other markets on their sales of Class I and Class II products. Presently, the recovery of such costs is limited to the 10-cent negotiable haul-

ing deduction, plus or minus whatever difference there is between the class prices applicable at the farm (township) pricing point and the plant. In the case of Class II milk, handlers recover an additional 10 cents per hundredweight through a pool credit. Although these provisions were intended to provide handlers with sufficient flexibility in pricing to recove farm-to-first plant assembly and hauling costs, the record indicates that under current conditions handlers are not able to do so.

One of the proponent cooperatives presented data showing the average costs incurred by the cooperative in hauling bulk milk from members' farms to different types of plants during the 12-month period of November 1974 through October 1975. Since the major portion of this milk was hauled by contract haulers, the data reflect actual hauling charges paid by the cooperative to haulers. About 2.5 billion pounds of milk were hauled, which represented 27 percent of the total producer milk on the market during that period.

For the 12-month period, the cooperative's average cost for picking up farm bulk tank milk and delivering it to 7 country reload stations was 26 cents per hundredweight. The average cost for deliveries to the cooperative's 5 manufacturing plants was 29 cents. The average hauling cost for milk moved directly from farms to to 18 distributing plants of other handlers was 33 cents, while the cost for similar deliveries to 20 manufacturing plants of other handlers averaged 28 cents. The 12-month weighted average cost of hauling milk to all such plants was 29 cents. For the last four months of this 12-month period, the average monthly costs ranged from 29 to 31 cents per hundredweight.

Several proprietary handlers also presented data on farm-to-plant hauling costs. Such costs ranged from 22 cents to 70 cents per hundredweight, with most falling between 25 cents and 32 cents. These data reflect similar ranges of hauling costs for both handlers and the proponent cooperative.

It is readily apparent that under the present order provisions handlers are not able to recover all of their farm-to-first plant hauling costs. Although such costs vary among handlers, it is reasonable to conclude that such costs average, as proponents contend, about 30 cents per hundredweight. As indicated, the recovery of hauling costs is limited under the order essentially to 10 cents on Class I milk and 20 cents on Class II milk. Relatively limited amounts may be recovered through the transportation differentials if the milk is moved from farms in one price zone to plants in a higher price zone.

The order provisions should reflect the costs that handlers incur in assembling milk from farms and transporting it to the plant of first receipt. Accordingly, the cooperatives' proposed 15-cent pool credit on all receipts of farm bulk tank milk should be adopted. As noted, a pool credit is now applicable to bulk tank milk used in Class II. The application of this procedure to all bulk tank milk would merely extend a method for recovering hauling costs that appears to be operating satisfactorily in this market. This revised procedure will tend to place handlers in a more comparable competitive position relative to both their intramarket and intermarket sales.

The record does not indicate that a pool credit of 15 cents per hundredweight will result in handlers being over-compensated for hauling costs that they incur. Minimum farm-to-first plant hauling costs were described as being at least this amount. The hauling cost data referred to earlier indicate that charges to the cooperative by contract haulers in October 1975, a month for which detailed data were presented, were not less than 17 cents per hundredweight. There may be an occasion, of course, where a handler, in order to hold his milk supply, may not wish to pass his hauling costs back to his producers. Although the pool credit would still apply, there would be nothing to preclude a handler from making off-setting over-order payments to his producers.

As envisioned by the proponent producer groups, the transportation credit on bulk tank milk would be applied in such a way that it would result in a lower blend price not only for bulk tank shippers but for can shippers as well. Although the present pool credit on Class II bulk tank milk is applied in this manner, this procedure should not be used under the pricing changes adopted herein. Can shippers, whose milk is priced at the plant to which it is delivered, normally pay the farm-to-plant hauling costs themselves. When their blend price is reduced because of the pool transportation credit, they in effect are also paying a portion of the farm-to-plant hauling costs on bulk tank milk as well. Since only about 3 percent of the Order 2 producer milk is now shipped in cans, about 14.5 cents of the 15-cent transportation credit would, under the cooperatives' proposal, be passed back to bulk tank shippers through the lower blend price. Nevertheless, the can shippers would experience the same 14.5-cent blend price reduction. Although the record reflects a view that can shippers should subsidize the cost of getting bulk tank milk from farms to plants, the record does not provide a reasonable basis for this position.

Most handlers will incur farm-to-first plant hauling costs in excess of the 15 cents that they would recover through the transportation credit on bulk tank milk. As indicated, the average cost is 30 cents per hundredweight. Handlers need to have the opportunity to recover at least some of these additional costs if the milk is to be competitive in the marketplace. Thus, they should be permitted to negotiate with a producer or his cooperative a tank truck service charge of up to 15 cents per hundredweight with respect to any farm-to-plant hauling costs not recovered through the 15-cent pool credit.

Numerous factors affect the cost of farm-to-plant hauling. These include the distance involved, terrain, types and condition of roads, weight limits on roads and bridges, volume of milk picked up at each farm, and size of tank truck used (often a function of the other factors). Thus, it is in the interest of both handlers and producers that the order provide some flexibility in pricing arrangements that reflects the varying conditions that affect the cost of collecting and hauling milk from farms to plants. Because of the relatively higher assembly costs involved, small producers, or those in somewhat isolated locations, for example, may find it necessary to authorize hauling deductions in order to be assured of continued tank truck service. Others may find handlers willing to absorb some of the farm-to-plant hauling in order to maintain conveniently located sources of supply. Such flexibility is provided in the present order provisions and should be continued.

The negotiable hauling deduction should be limited to 15 cents per hundredweight rather than 25 cents as proposed by cooperatives. In some cases, of course, farm-to-plant hauling costs will exceed the 30 cents that handlers would be permitted to recover through the pool credit and negotiable hauling deduction. However, the imposed limit recognizes that handlers can recover part of the hauling cost through the difference in zone prices when milk is procured from locations more distant from the city than their plant. Also, the limit will tend to encourage handlers to move milk as efficiently as possible.

A brief from certain handlers requested the elimination of the order provision that allows a cooperative to authorize hauling deductions on behalf of its members. The handlers contended that the intent of the hearing proposals is to provide more comparable procurement costs among competing handlers, which would be achieved in part by permitting handlers to negotiate with producers to recover a portion of the hauling cost. The handlers indicated that this goal would not necessarily be achieved if cooperatives can act on behalf of their members and thus, as an organization, preclude the recovery of hauling costs by handlers that producers acting individually might be willing to authorize.

This request, although related to the issues under consideration, goes somewhat beyond the scope of the evidence presented on the basic issues. Any order change of this nature should be based on testimony directly related to this point. Accordingly, the request is denied.

Transportation differentials and Class I price differential. The transportation differential rate of 1.2 cents per hundredweight for each 10 miles that is now used to adjust the Class I and uniform prices for location should be increased to 1.5 cents for each 10-mile zone more distant than the 201–210 mile zone and to 1.8 cents for each 10-mile zone less distant than the 201–210 mile zone. Also, the present Class I differential of $2.40 that is applicable at the 201–210 mile zone should be reduced to $2.25.

The combination of the pool transportation credit and tank truck service charge in itself will not place metropolitan area handlers in a comparable posi-

tion with Order 4 handlers relative to their cost of Class I milk. As indicated, most of the milk in the Middle Atlantic market moves directly from farms to the city distributing plants, with producers paying the hauling costs. In the Order 2 market, about 80 percent of the milk received by the metropolitan area handlers for fluid use moves through supply plants. The costs of transferring this milk at supply plants and hauling it to the metropolitan area are borne by the distributors. Thus, comparable procurement costs for Order 2 and Order 4 handlers are possible only if the differences between the Class I prices at supply plants and at the distributing plants reflect the full cost of obtaining supply plant milk. Presently, such price differences under the order fall considerably short of this.

The proponent cooperative that presented data on farm-to-plant hauling costs also submitted data regarding its cost experience for 7 country reload stations which it operated. During the 12-month period of November 1974 through October 1975, over 597 million pounds of farm bulk tank milk were received at these stations and reloaded onto over-the-road tankers for shipment to other plants. No milk was received in cans, nor was there any milk processing at such facilities. The average operating costs at the individual plants ranged from 8.5 cents (84.6 million pounds of receipts) to 21 cents (60.3 million pounds) for this period. For all plants, the weighted average cost was 12 cents per hundredweight. Thus, on this basis, it is presumed that metropolitan area handlers must pay an average of 12 cents per hundredweight on supply plant milk to cover the cost of operating the transfer facilities.

The same cooperative also presented data regarding long-distance hauling rates that were applicable to interplant movements of milk. The hauling rates were those being charged by a major commercial hauler for transporting milk from 14 country plants to distributing plants in Queens, Nassau, Suffolk and Westchester Counties in New York State. The country plant locations varied from the 151–160 mile zone to the 391–400 mile zone. The rates were applicable to minimum loads of 49,000 pounds of milk. The cooperative's witness indicated that from time to time the cooperative had used the hauler's services for moving milk to the metropolitan area from these various country locations. Also, the witness indicated that the cooperative applied the same rates to milk which it moved in its own trucks.

An analysis of the hauling data indicates that "fixed" costs associated with long-distance shipments are 19 cents per hundredweight. The rates reflect a "variable" cost of 1.8 cents per hundredweight per 10 miles, or 36 cents for 200 miles. Thus, the total transportation cost for 200-mile shipments from the 201–210 mile zone to distributing plants in the major metropolitan area, for example, would be 55 cents per hundredweight (19 cents plus 36 cents).

A spokesman for several cooperative associations maintained at the hearing and in their brief that no change should be made in the transportation differential rate on the basis of data presented in this proceeding. The witness claimed that the hauling rates submitted as evidence were not representative of actual rates paid by most handlers in this market. However, the witness did not provide any detailed hauling cost data to substantiate his position. Several handler witnesses testified that the hauling cost data appeared to be reasonable. Since these were the only comprehensive hauling cost data presented at the hearing, they must be viewed as the best evidence available in considering whether a change in the transportation differentials is needed.

In view of the variable cost reflected in the hauling rates being charged for long-distance milk shipments, the present 1.2-cent transportation differential rate should be increased. For those zones less distant from the city than the 201–210 mile base zone, the rate should be increased to 1.8 cents, which is the full variable cost. For the more distant zones, the rate should be limited to 1.5 cents, which is the rate commonly used under other Federal orders.

Historically, the Upper Midwest has been the major source of supplemental milk supplies for many of the markets throughout the United States. To reflect the variable cost of moving such milk to distant markets, Class I prices in Federal order markets gradually increase the more distant the markets are from the Upper Midwest. Such gradation of prices may be noted, for example, as one moves from the Upper Midwest to markets (including the Order 2 market) in the northeastern part of the country. The gradation of prices reflects to a large degree a transportation rate of 1.5 cents per hundredweight per 10 miles. The adoption of this rate for at least the outer portion of the Order 2 milkshed would tend to provide a further coordination of Class I prices on a geographical basis.

With respect to the inner zones of the Order 2 market, however, a 1.8-cent transportation rate should be established in recognition of the pricing problems that are peculiar to this market and which are of particular concern in this proceeding. As indicated, the basic thrust of the proposals under consideration is the establishment of a Class I price structure under the order that will permit milk distributors in the major metropolitan area of the market to be competitive with distributors in the nearby Middle Atlantic market. Much of the milk obtained by these Order 2 handlers originates in those production areas between New York City and the 201–210 mile zone, the base price zone for the market. For this milk to be competitive with Order 4 milk, the cost of transporting such milk to the market outlets must be adequately reflected in the Order 2 price structure. As noted, the variable cost for hauling milk in this market is 1.8 cents per 10 miles. Reflection of this full amount in the order's transportation differentials for the inner pricing zones is needed in conjunction with other changes in the order's pricing provisions to overcome the severe competitive problems being experienced by certain Order 2 handlers.

Because of the geographic location of the area in which the 1.8-cent transportation differential rate would apply, the use of this rate, versus the 1.5-cent rate, should not result in problems of price alignment between markets, as might be the case if this rate were adopted for other markets. Only two markets are adjacent to the inner zones of the Order 2 market—Middle Atlantic and New England. As indicated, the 1.8-cent rate is being adopted to provide a better alignment of Class I prices between the Middle Atlantic and New York-New Jersey markets. In the New England market, the applicable location adjustments for the inner zones of that market are in effect providing handlers a transportation rate on supply plant milk of 2 cents per 10 miles. Since there are no other markets further east of the Order 2 market, this eliminates any concern for price coordination in that direction.

Increasing the transportation differential rate of 1.8 cents will not in itself permit metropolitan area handlers to recover all of the procurement costs associated with supply plant milk. As indicated, there are the fixed costs for long-distance shipments, which are now 19 cents per hundredweight. Also, there is the cost of transferring milk at supply plants, which is now averaging 12 cents per hundredweight. Historically, these additional costs have not been reflected in the order's price structure. Nevertheless, they have a direct bearing on the metropolitan area handler's ability to be competitive in terms of his Class I procurement costs with handlers in the Middle Atlantic market, as well as Order 2 handlers receiving direct-ship milk, who are not experiencing such costs. It is necessary, then, that recognition be given to these costs. This should be done by lowering the Class I price differential at the 201–210 mile zone from $2.40 to $2.25.

The Class I price structure and transportation allowances under Order 2 should be such that the average cost of Class I milk to metropolitan area handlers does not exceed the approximate cost of Class I milk sold in the Order 2 North Jersey area by handlers under the Middle Atlantic order. As noted earlier, distributors in the Philadelphia-South Jersey area must pay a Class I differential of $2.78 plus a 6-cent direct delivery differential on milk received directly from producers' farms, or a total of $2.84. In addition, there is the cost of moving packaged products from Order 4 plants into the North Jersey area, although this is limited in some cases since there is relatively little distance between a number of Order 2 distributing plants in North Jersey and several Order 4 plants in South Jersey and southeastern Pennsylvania. In fact, one Order 4 distributing plant is located at Flemington,

New Jersey, which is in the Order 2 marketing area and only a few miles from several Order 2 plants.[6] While it might be reasonable to use the Order 4 differential cost of $2.84 for intermarket price comparisons, it is concluded that this amount should be increased to $2.92 to reflect some additional costs that Order 4 handlers would experience in moving packaged milk into the North Jersey area.

Unless the base zone Class I differential is lowered, the cost of supply plant milk to Order 2 handlers in the major metropolitan area will continue to exceed the cost of Order 4 milk. If the base zone differential were maintained at $2.40, the transportation differential rate of 1.8 cents per 10 miles would result in a Class I differential at the 1–10 mile zone of $2.76. To this must be added the fixed hauling cost of 19 cents and the supply plant transfer cost of 12 cents, which totals $3.07. This is 15 cents higher than the approximate Order 4 differential cost of $2.92 against which Order 2 handlers are generally competing.

It might be argued by producers who obviously will be concerned about the impact of such a price reduction on their returns that the estimated Order 4 cost of $2.92 is too low and that a lesser reduction in the Order 2 Class I differential is needed to overcome the competitive problem at issue. On the other hand, handlers could argue that the present 14-cent difference in Class I prices at New York City and Philadelphia (in favor of Order 2 handlers) should be reflected in the new price structure. To have supply plant milk obtained from the 201–210 mile base zone cost no more to handlers than the present $2.64 Class I differential at New York City, the base zone differential would have to be reduced to $1.97. A price reduction of this magnitude would have, of course, a severe impact on the returns to Order 2 producers. It is concluded that although the 15-cent reduction adopted herein will not maintain the present intermarket price relationship reflected in the present Order 2 and Order 4 Class I pricing provisions, it will permit Order 2 handlers to be competitive with Order 4 handlers in the North Jersey area. At the same time, the 15-cent reduction can be considered as having only a moderate impact on producers relative to the seriousness of the loss of Class I sales that is the central theme of this proceeding.

Rather than using a Class I price reduction as a means for the recovery of transportation costs by handlers the proponent producer groups urged that a "metropolitan transfer credit" be adopted. Under their proposal, handlers would receive a 25-cent per hundredweight credit on receipts of Class I milk originating beyond the 1–140 mile zone and transferred in bulk, either directly from farms or from plants, to plants located within the 1–65 mile zone. The credit would be limited to 19 cents if the transportation differential rate were set at 1.8 cents per 10 miles rather than at 1.5 cents, the rate on which the proposed 25-cent credit was based. The intent of the credit was to enable metropolitan area handlers to recover the "fixed" hauling costs and any "variable" hauling costs not reflected in the transportation differential rate.

The metropolitan transfer credit was proposed in recognition of the fact that the order pricing does not reflect the current differences in value that milk has to handlers at various locations. Because of the increased transportation costs, the value of milk in the more distant production areas of the milkshed relative to its value at the major consumption center is less now than previously. Although the metropolitan transfer credit would reflect this decrease in value of distant milk in prices paid by handlers, the order prices payable to the distant producers would not be reduced to the same extent. This is because the credit to handlers, through the mechanism of pooling, would result in all producers in the market, and not just the distant producers, sharing equally the cost of moving distant milk supplies to the metropolitan area. Thus, the returns to the distant producers would not be lowered as much as is warranted by the actual difference in location values. The Class I price reduction, on the other hand, would impact fully on the distant producers. Accordingly, this is the preferable means for reflecting the lower value of distant milk in the returns of distant producers.

Direct delivery differential. A direct delivery differential of 15 cents per hundredweight should be paid to all producers whose farms are located in the 1–70 mile zone.

Under the Class I price structure adopted herein, the Class I differential at the 1–10 mile zone would be $2.61. Handlers in the 1–10 mile zone who receive bulk tank milk directly from farms should be able under the provisions adopted herein to obtain such milk at not more than this differential cost. If the cost of hauling such milk from the 51–60 mile zone, for example, were 35 cents, as the record suggests, the handler would recover 15 cents of this cost through the pool transportation credit. Another 9 cents would be recovered through the transportation differential. The remaining 11 cents of the 35-cent cost could be recovered by negotiating a hauling deduction with the producer or his cooperative. Similar cost portrayals could be set forth for other near-in zones from which direct-ship milk is received by city handlers. However, it is reasonable to presume under these assumptions that the cost of such milk at plants in the 1–10 mile zone would approximate the $2.61 differential cost.

Under the adopted pricing arrangement, the differential cost of supply plant milk at city plants would average $2.92 per hundredweight. This would mean a 31-cent difference between the $2.92 cost of supply plant milk and the $2.61 cost of direct-ship milk at the city. The 31-cent difference represents the 19-cent fixed hauling cost on long-distance shipments and the 12-cent supply plant transfer cost. This difference suggests that direct-ship milk would be worth up to 31 cents per hundredweight more to city handlers than the adopted city Class I differential of $2.61. Accordingly, the present 5-cent direct delivery differential would not adequately reflect the additional value that direct-ship milk from nearby areas would have to city handlers under the new price structure relative to alternative milk supplies from distant supply plants.

The economic value of milk that metropolitan area handlers receive directly from producers is determined in part by the cost of alternative supplies. Only relatively limited quantities of milk are available to metropolitan area handlers on a direct-ship basis. Most of the Class I milk needed by such handlers must be obtained from distant supply plants. The procurement costs for such milk, however, are substantially higher than for nearby direct-ship milk, which enhances the value of the direct-ship milk. By making their milk available to the metropolitan area handlers, the nearby direct-ship producers are providing these handlers with an economic service of benefit to the handlers, since the handlers otherwise would have to incur the additional procurement costs associated with alternative milk supplies from supply plants. The direct-ship producers should be compensated for this service.

Although the direct-ship milk may have greater value to metropolitan area handlers, the increase in the present direct delivery differential should be limited to 15 cents per hundredweight for two basic reasons. First, the direct delivery differential would apply, as now, to all direct-ship milk used in Class II as well as to that used in Class I. Through the transportation differentials for Class II milk, the order already fixes for the Class II price at plants in the 1–10 mile zone 8 cents higher than at the 201–210 mile zone. With the 15-cent direct delivery differential, the cost of Class II milk at New York City would be 23 cents per hundredweight over the base zone Class II price. Actually, relatively little milk is used in Class II at the city distributing plants. Nevertheless, in increasing the direct delivery differential, its impact on a handler's Class II milk cost should be recognized.

A second consideration is the general tendency for handlers not to negotiate any hauling deductions with producers located in those production areas near the major metropolitan area. There has been a gradual shift of producers in these areas from the Order 2 market to the nearby New England and Middle Atlantic Federal order markets. To hold their local supplies, Order 2 handlers have been reluctant to seek authorized hauling deductions from the near-in producers. Because the blend prices in these neighboring markets can be expected to remain attractive to such producers, it is questionable whether handlers will negotiate any hauling de-

[6] Official notice is taken of the list of pool handlers regulated under the Middle Atlantic order in December 1975, which was released to the industry on January 13, 1976, by the Market Administrator of that order.

ductions on direct-ship milk. This, of course, would offset some of the cost advantage that direct-ship milk might otherwise have relative to supply plant milk.

The direct delivery differential should continue to be applicable only to producers located in the 1–70 mile zone, rather than to producers in the 1–110 mile zone as was proposed. In March 1975, the only month for which such data are available in the record, all of the Class I producer milk originating on farms in the 1–70 mile zone was direct-shipped to plants located in this zone. With respect to the more distant zones, at least some of the Class I milk originating in these zones and moved to metropolitan area plants was reloaded. For the 71–80 mile zone, the amount was very limited—only 1 percent of the total Class I milk originating in that zone. With respect to the 81–90, 91–100, and 101–110 mile zones, however, the amounts of Class I milk reloaded for shipment to plants in the 1–70 mile zone ranged from 27 to 29 percent of the total Class I milk originating in each of these zones.

Under the current handling arrangements, an extension of the direct delivery differential zone would mean that the differential would be applicable not only to direct-ship milk, as intended, but also to milk that is reloaded before being delivered to metropolitan area plants. A handler could not afford to pay both the supply plant transfer cost and the direct delivery differential on the same milk. As long as the direct delivery differential is applied on the basis of where a producer's farm is located rather than on the basis of the milk actually being delivered directly from the farm to the plant, it is not feasible to extend the application of the differential as was proposed.

Upstate fluid differential. A proposed "upstate fluid differential" of 10 cents per hundredweight to be applicable to Class I milk received at distributing plants located outside the 1–65 mile zone from farms beyond the 1–110 mile zone should not be adopted.

This proposal was intended to provide a certain cost relationship between distributing plants in upstate New York and distributing plants in the major metropolitan area for milk received at these plants for Class I use. It was pointed out that most upstate distributing plants receive milk directly from farms, thereby avoiding reloading costs that are incurred by the metropolitan area handlers who receive milk from supply plants. Proponents contended that the additional 10-cent charge to the upstate handlers would tend to equalize procurement costs among competing handlers. The extra 10 cents charged such upstate handlers would be pooled, which would result in a slightly higher uniform price to all producers in the market.

Although the thrust of the order changes adopted herein is to more nearly equate the procurement costs of competing handlers, the proposed 10-cent charge would go beyond what is necessary to meet the competitive problems portrayed on this record. Moreover, the proposal gives no consideration to the present adequacy of milk supplies at distributing plants in upstate New York. Although the Class I price would be lowered throughout the milkshed under the proposals adopted herein, there is no indication that any offsetting increase in the Class I price at such plants is necessary to attract adequate milk supplies to these plants for fluid use.

2. *Changes in certain classification provisions.* Cooperatives and proprietary handlers proposed several changes in the provisions that set forth the manner in which milk shall be classified. The specific changes are discussed under the following subheadings.

a. *Classification of milk moved between Order 2 pool plants and plants regulated under an order administered solely by the State of New York.* A proposal to classify transfers of milk between an Order 2 pool plant and a plant regulated under a New York State order in the same manner as transfers between an Order 2 plant and a plant under another Federal order should not be adopted.

A handler organization proposed that milk moved between a plant regulated under the New York-New Jersey order and a plant regulated under a New York State order (other than the State counterpart of Federal Order 2) be accorded the same regulatory treatment now provided under Order 2 for milk moving between federally-regulated markets. Thus, the classification of milk transferred by an Order 2 handler to a plant regulated under a State order would be determined by the classification established for such milk under the State regulations. Packaged milk that is classified in Class I as defined under the State regulations could be transferred to an Order 2 plant without the receiving handler incurring any obligation under Order 2 on such milk. Receipts of bulk milk at the Order 2 plant would be classified pro rata to the plant's utilization unless a Class II classification were requested by both plant operators.

The witness for the proponent handlers indicated that the proposal was prompted by the experience of an Order 2 handler who also operates a plant in Rochester, New York, that is regulated under a separate State order. According to the witness, the Rochester plant has both a fluid milk operation and a manufacturing operation. Bulk milk pooled under Order 2 is moved to the Rochester plant for manufacturing. At the same time, the handler moves a very limited quantity of packaged fluid milk products from the Rochester plant to an Order 2 pool plant for the latter plant's employees.

The witness indicated that the State regulations require that fluid milk sales in the marketing area defined by the State order be assigned first to milk of qualified dairy farmers who supply the fluid needs of that market. He stated that under the terms of Order 2, however, bulk milk transfers to the Rochester plant, although intended for manufacturing, are assigned to both Class I and Class II. This, he pointed out, results in the handler being charged twice for a portion of his fluid milk sales, i.e., once under the State order and again under the Federal order. The witness further stated that the packaged milk moved from the Rochester plant to the Order 2 plant is Class I under the State order but is prorated to Class I and Class II under the provisions of Order 2. He contended that the Federal order thus imposes a penalty on milk moved between plants regulated under a separate New York State order and plants regulated under Federal Order 2.

Although there was no opposition testimony concerning the proposal, its adoption was opposed in a brief submitted by two cooperatives. They expressed the view that the proposed change could result in a surplus classification for Order 2 milk that actually was shipped to a State regulated plant for fluid use. The cooperatives suggested that a more appropriate solution would be the amendment of the State order if some relief is considered necessary.

According the same regulatory treatment for milk movements between the Order 2 market and a State order market as is provided for milk movements between federally-regulated markets would imply that the State order is comparable with Order 2 in its regulatory effectiveness. This is not the case. Not only are the provisions of the State orders significantly different from those of Order 2 but the State orders cannot be effective in pricing milk received from out-of-state sources, since the State of New York has no pricing authority relative to such milk. Regulation of plants under the New York statutes therefore provides no assurance that the classification and pricing of milk received at such plants are compatible with the provisions of the New York-New Jersey order.

b. *Classification of bulk milk received from other order plants.* Bulk milk received at an Order 2 pool plant from a plant regulated under another Federal order, if not classified as Class II milk by agreement, should be classified pro rata to the marketwide utilization of producer milk or the handler's total utilization, whichever results in the greater Class II classification. The classification of such receipts should be limited however, so that the quantity of milk assigned to Class II is not greater than the receiving handler's Class II use.

Such receipts are now classified pro rata to the utilization in each class at the plant where the milk was received.

The classification procedure adopted herein for receipts of other order milk was proposed by a number of cooperatives, although they urged that certain modifications be included. Certain cooperatives proposed that when prorating the other order milk the utilization of the receiving plant, rather than the receiving handler's total utilization in his system, he used whenever this would result in more of the milk being assigned to Class II. The other cooperatives suggested that the allocation of other order bulk milk

to the receiving handler's utilization be carried out at an earlier point in the allocation procedure.

In supporting the proposals, spokesmen for proponents pointed out that other order bulk milk received at a Class I distributing plant operated by a multiple-plant handler is now assigned primarily to Class I, even if the handler's other pool plants are mainly Class II operations. This procedure, they asserted, gives the other order milk a priority claim on the handler's Class I use and results in more milk from local producers being assigned to Class II. According to the spokesmen, the intent of the proposals is to encourage handlers to use pool milk for fluid use and to minimize any displacement of local milk in Class I with other order milk. Witnesses contended, however, that the proposals would not prevent or impede interorder milk movements when additional milk is needed for fluid use. They also pointed out that the proposed classification conforms with the procedure followed under virtually all other Federal orders.

Receipts of other order bulk milk not assigned to Class II use by agreement presently are assigned pro rata to the utilization in each class at the Order 2 plant where the milk is received. Thus, in the case of a handler who, for example, operates a pool distributing plant and a pool plant at which the utilization is largely Class II, receipts of other order bulk milk at the distributing plant are assigned largely to Class I. At the same time, pool milk received from local producers at the handler's other pool plant is assigned largely to Class II. Although the handler's total operation utilizes milk from both local and other order producers, the economic burden of the handler's lower-valued reserve milk supplies is borne by the local producers. Thus, an equitable sharing of Class I and Class II utilization among the handler's supply sources is not achieved.

The provisions for dealing with interorder bulk shipments should be ones which assign a proportion of the Class I and Class II utilization of the receiving handler between the local producers and the other order producers in a way that accords recognition to each group's interest in, and contribution to, such utilization. As provided under other orders, interorder bulk milk shipments should share in the utilization of Order 2 handlers basically to the same extent that Order 2 producers share in the market's Class I and Class II utilization. Accordingly, the classification of bulk milk received from other order plants by handlers receiving both local and other order supplies should be determined by assigning the marketwide utilization to such milk, unless a Class II classification is requested. This would mean that when a handler calls upon another order market to furnish a part of his total supply his local producer milk would not be assigned the lower surplus return until the milk from the shipping market has been assigned a Class II utilization equal to the marketwide utilization of Class II milk in the receiving market.

The limit placed on the quantity of other order milk assigned to Class II (i.e., the actual quantity utilized as Class II by the receiving handler) assures that the order provisions themselves will not assess the handler an additional cost related to the assignment to Class II of milk in excess of a handler's own utilization in that class. It assures also that producers in the shipping market will have their milk classified as Class II milk in no greater quantity than that actually utilized by the handler to whom the milk was transferred.

The order should not provide for marketwide proration of bulk milk received from another order plant when the receiving handler has a greater proportion of milk in Class II than the average in the receiving market. Instead, such milk should be classified pro rata to the handler's total utilization in each class. Marketwide proration of receipts of milk from other markets is designed to deal primarily with milk received by a handler who is supplementing his local supply for Class I use. In the case of a handler with a higher proportion of milk in Class II than the market average, marketwide proration would tend to encourage unduly and uneconomically the importation of milk because it would assign a disproportionate share of the milk of local producers to Class II.

Other order milk may be imported by a handler who operates just a single plant. In such cases, the milk would be assigned to the particular plant's utilization within the limits described above. In other cases, however, the milk may be received at the distributing plant of a multiple-plant handler. The Class I utilization at such plant is likely to be higher than the average Class I utilization at all of his pool plants. It is possible that the handler would have supplies at his other pool plants which would be in lower-priced uses than the milk brought in from other regulated markets. If the milk imported by a multiple-plant handler is assigned in this case only to the receiving plant's utilization, such assignment could reduce the handler's percentage of producer milk in Class I in his system to a greater extent than if the assignment were applied over the whole system.

Assigning bulk receipts from other order plants to the handler's system utilization will prevent a handler with more than one pool plant from discriminating against either his own producers or those supplying the other Federal order market by importing milk not filling a bona fide need for Class I use. The order should provide, therefore, that receipts of interorder bulk milk be prorated to the combined utilization of milk at all of the handler's pool plants in the receiving market.

At the hearing, producer groups proposed that the utilization of the receiving plant be used in those cases where this would result in a greater Class II classification of the other order milk than if the utilization of the handler's system were used. Their spokesman indicated that this procedure would generally preclude such milk from sharing in the receiving handler's Class I utilization at other plants when the milk is received at the handler's manufacturing plant for Class II use but a Class II classification is not requested by the receiving and shipping handlers.

This procedure should not be adopted. The order provides that a Class II classification may be requested by the two handlers involved when bulk milk is shipped from one market to another for surplus disposal. This arrangement facilitates the disposal of surplus milk through outlets in another market without disrupting intermarket blend price relationships. It is expected that when milk is received at an Order 2 plant for manufacturing the handlers will request the lower classification for the milk. In the absence of such request, it must be assumed that the Order 2 handler is supplementing his local supply for his Class I operation. In this case, the classification of the other order milk should reflect the handler's reliance on both local and other order producers for milk for fluid use.

In order to implement the procedure adopted herein for classifying other order bulk milk on the basis of the combined utilization at all of the handler's pool plants, it is necessary to modify the procedure for allocating a handler's milk receipts to his utilization. The changes establish a procedure whereby the milk from other order plants will be classified on the basis of the handler's total system, but will be assigned to classes at the pool plant of actual receipt. Under this procedure, a situation may arise where the quantity of other source milk to be subtracted from a specific class (as determined from receipts and utilization in his entire system) exceeds the utilization remaining in that class at the plant of actual receipt. In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of his other pool plants in his system. Since such exchanges of utilization will be made in corresponding amounts as between plants, this technique will not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system. The order should specify that such utilization shifts be made first at the other pool plant of the handler located nearest to the plant of actual receipt, and then in sequence at each successively more distant pool plant of the handler.

The present sequence for allocating receipts from various sources to a handler's utilization should not be changed. A spokesman for several cooperatives asked that the allocation procedure be reviewed to determine whether the pro rata classification of other order bulk milk should be moved forward in the allocation sequence. The cooperatives' position was that such a shift, if appropriate, would increase the availability of Class II utili-

zation for assignment to receipts of other order milk.

If other order milk were prorated earlier in the allocation sequence, some receipts from unregulated sources necessarily would be classified later in the sequence. Thus, receipts of other order milk would be assigned to Class II utilization before such receipts from unregulated sources. This could result in a greater quantity of unregulated milk being assigned to Class I uses than otherwise, and a corresponding increase in the handler's pool obligation. Such a change would not be appropriate on the basis of this record and should not be made.

As indicated, the marketwide utilization of producer milk for the Order 2 market will be one of the bases for classifying bulk milk received from other Federal order markets. However, the actual marketwide utilization for the month in which the milk is received cannot be determined until the other order milk is classified. This cannot be done until the marketwide utilization is known. To overcome this problem, the order should provide for the use of an estimated marketwide utilization. The estimate should be announced by the market administrator and should be final for this purpose.

c. *Classification of milk dumped, disposed of for animal feed, or lost under extraordinary circumstances.* Fluid milk products that a handler dumps, disposes of for animal feed, or loses due to extraordinary circumstances beyond his control should be classified as Class II milk.

Presently, such types of disposition are considered as part of a pool plant's shrinkage of milk. Under the current provisions, shrinkage is prorated to the plant's utilization in each class, except that the Class II assignment is limited to 2 percent of the plant's actual Class II use. Thus, the classification of these several types of disposition varies according to the type of plant operation involved.

A handler organization proposed that fluid milk products dumped or discarded, or destroyed or lost under extraordinary circumstances, be specified as Class II milk. The organization's spokesman indicated that a handler may dump milk because it is unsuitable for disposition as a fluid milk product. He cited instances where entire truck loads of milk have been dumped because strong odors or high acidity rendered the milk useless for fluid purposes. He pointed out that occasionally a manufacturing outlet can be located to take such milk, but that quite often outlets are not available or they may be so distant that such disposition is not economically feasible. With respect to milk destroyed or lost under extraordinary circumstances, the witness indicated that a Class II classification should be provided to cover situations where milk is destroyed through accidental contamination or is lost in a truck accident.

Classifying dumped milk in Class II was supported by another handler. The handler's witness pointed out that handlers ordinarily experience some spoilage in fluid milk products, particularly in the case of route returns. The witness stated that handlers must either dump such milk or dispose of it as animal feed, and urged that such disposition be priced as Class II milk. He claimed that such classification is justified because the handler receives virtually no monetary return for such milk. The witness also supported, on the same basis, a Class II classification for milk destroyed or lost under extraordinary circumstances, such as vehicular accidents, fire, flood, or similar catastrophic occurrenes.

A number of cooperatives in the market opposed the classification changes urged by handlers. It was their position that dumpage and losses due to extraordinary circumstances are business risks and should be absorbed by the handler. They contended that milk lost under extraordinary circumstances should not be classified as Class II milk since handlers customarily insure against such losses.

"Shrinkage" should be considered as a disappearance of milk that cannot be acounted for in a handler's operations. When a handler finds it necessary to dump fluid milk products or dispose of fluid milk products for animal feed, it is possible to establish that such disposition actually occurred. Also, to the extent determinable from records, milk that is lost or destroyed can represent a known disposition. In these cases, the milk involved can be accounted for and should not be included with shrinkage as milk for which no disposition can be established. Moreover, since the handler receives virtually no return from such disposition, the handler's obligation under the order for such milk should be limited to the lowest class price under the order, which is the Class II price. Although the loss may be insured, it is reasonable to presume that any indemnification would be commensurate with whatever value is established for the milk under the order.

It is important that the market administrator have an opportunity to verify all dispositions of milk claimed by a handler. In the case of fluid milk products disposed of for animal feed, handlers should keep records suitable for the market administrator to determine that such dispositions actually occurred. When milk is dumped, however, the market administrator cannot later determine with certainty the quantities involved through examination of handler records. Therefore, it will be necessary for the handler to provide the market administrator advance notice and opportunity to verify milk dumpages, as prescribed by the market administrator.

Milke destroyed or lost under extraordinary circumstances completely beyond the handler's control should be Class II milk to the extent that the quantity involved can be established from handler records satisfactory to the market administrator. Such Class II milk should include milk destroyed or lost as a result of such things as vehicular accidents, fire or floods. In such circumstances, it is impossible to provide advance notice to the market administrator. However, the quantities of fluid milk products involved can generally be established in a reasonable manner. The quantities of milk lost in a truck accident, for example, can frequently be verified from shipping invoices or from farm pickup records.

It is not intended that this provision shall be applicable to milk lost through faulty pipe connections, open or leaking valves, broken hoses, contamination and similar accidents that must be considered normal business hazards. Milk lost in such manner is part of the normal shrinkage experienced in any milk operation and such losses are adequately provided for under the shrinkage provisions.

At the hearing, proponent's witness indicated his intent that milk contaminated with antibiotics be considered as destroyed or lost under extraordinary circumstances. In the event such milk could not be otherwise disposed of, the dumpage provisions adopted herein should accommodate the disposition of such milk.

4. *Charges on overdue accounts.* The order should provide for the application of a late-payment charge of 1 percent per month on handler obligations to the market administrator that are overdue. Such obligations would be those due the producer settlement fund and the administrative expense fund, both of which are maintained by the market administrator. Any such unpaid obligation should be increased by 1 percent on the first day after the due date of the obligation and on the same day of each succeeding month until the obligation is paid.

The institution of a late-payment charge under the order was proposed by a cooperative association. It proposed that any unpaid obligation of a handler that is due the market administrator be increased on a daily basis, beginning the first day the obligation is overdue, by an amount reflecting the "prime rate" charged by banks plus 5 percentage points. Thus, if the prime rate (the interest charged by commercial banks on loans to their preferred business customers) were 7 percent, the annual charge would be 12 percent (7 percent plus 5 percentage points), or approximately 0.033 percent as applied on a daily basis.

As set forth in the hearing notice, the cooperative's proposal also would have applied a charge on any overdue payments by the market administrator from the producer settlement fund to handlers. At the hearing, however, the cooperative deleted this type of charge from its proposal.

The proposal, including the charge on overdue payments by the market administrator, was supported by a number of other cooperatives in the market.

Spokesmen for the proponent and supporting cooperatives indicated that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments to the market administrator by regulated handlers. They cited the collection problems being

experienced by the market administrator and indicated that producers have an interest in timely payments by handlers. It was pointed out that late payments can result in the market administrator having insufficient money in the producer settlement fund to make the necessary equalization payments to handlers, with handlers in turn being unable to pay their producers. It was also pointed out that late payments result in money due the market administrator not being available for investment by him to maximum advantage, such as during the heavy-production months when money from handlers is withheld under the "Louisville Plan" for later payment to producers during the short-production months. In addition, the spokesmen indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, the witness for the proponent cooperative contended that the charge should be related to current interest rates since delinquent handlers are in effect borrowing money from producers. The spokesman indicated that a charge based on the prime rate plus 5 percentage points is in line with interest rates on business loans where more than a minimal credit risk is involved. In urging that the charge be apportioned on a daily basis, the witness contended that delinquent handlers should be assessed for only the number of days that the payment is actually late, rather than be assessed on the basis of a monthly charge as under other orders.

A number of handlers, although they did not testify at the hearing on this issue, submitted briefs in which they set forth varying positions on the proposed late-payment charge. Several suggested that a "grace" period be provided, with the charge not becoming applicable until 3 to 7 days after the due date for the payment. This, they claimed, is needed to accommodate weekends, holidays, and delays in mail delivery that could result in handlers' payments not reaching the market administrator by the payment deadline. One handler contended that the charge should be based on the prime rate plus 2 percentage points. Another urged a fixed charge of 0.75 percent per month. Several handlers held that if a late-payment charge is adopted the charge should apply not only to late payments from handlers to the market administrator but to late payments or refunds from the market administrator's office to handlers as well.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the present marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer settlement fund.

Also, the prompt payment of amounts due the administrative expense fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to this fund could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that is at least as much as the cost of borrowing from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Data placed in the record by a representative of the market administrator's office indicate a late-payment experience of a serious and continuing nature on the part of handlers in the New York-New Jersey market. For the 12-month period of January through December 1975, the market administrator issued 1,119 charge billings to handlers. These covered the monthly obligations of handlers to the producer settlement and administrative expense funds, all of which were due by the 18th day of the following month (i.e., payments were to be received by the market administrator by that date). For this period, only 216 payments were received by the market administrator on time. This payment delinquency probably can be attributed in part, however, to the relatively short time between the mailing of the billings to handlers, which was completed by the market administrator's office at the latest by the 15th of the month, and the date by which the payments were due. Nevertheless, even by the 21st day of the month, which should have been sufficient time for the transmission of the billings and payments through the mail, only 630 payments, or 56 percent of the payments due, were received by the market administrator. On a monthly basis, the percentage of payments received by the 21st ranged from 48 percent to 65 percent. For the year, 203 of the 1,119 payments due were still outstanding at the end of the month in which the billings were made.

In terms of money owed, the data indicate that for the 12-month period nearly one-fourth of the money due the market administrator had not yet been received by the 21st day of the month.

On the basis of this payment experience, it is appropriate to institute a late-payment charge on handler payments to the market administrator that are overdue. In the absence of a late-payment charge, handlers have little incentive to make their payments to the market administrator on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route, and the practicalness of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers a substantial inducement to make their payments to the market administrator on time.

The late-payment charge should be established at the rate of 1 percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it must be an amount that is at least as much as what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. If this is not so, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. Under present conditions, a monthly charge of 1 percent should provide reasonable assurance that producer funds do not represent the cheapest source of money.

As noted earlier, it was proposed that the late-payment charge be a variable charge that parallels the movements of the "prime rate." It also was proposed that the charge be apportioned on a daily basis so that a handler would be assessed for only the number of days he was actually late in making his payment. These procedures should not be adopted. If the late-payment charge were treated strictly as interest and computed on a daily basis, the order would merely represent a banking service for handlers who desire to use producer funds as an alternative source of money at the going interest rate. This is not the intended purpose of the late-payment charge. Rather, it is to be a penalty, in effect, that will induce handlers to pay their obligations to the market administrator on time.

In their brief, certain handlers contended that the Secretary has no authority under the Act to impose a "penalty" on a handler under the terms of a milk order. We do not take this position. Instead, we contend that a late-payment charge, or "penalty," may be adopted under the statutory authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The late-payment charge adopted herein is considered essential to the effectuation of the payment provisions of the order.

The Act does contain provisions in section 608c(14) pertaining to certain penalties. In short, these provisions specify that a handler shall be fined a monetary amount upon being convicted of violating a provision of an order. However, we do not look upon these provisions as precluding the use of a late-payment charge, or "penalty," on overdue accounts.

No "grace" period should be provided in applying the late-payment charge, as

several handlers urged in their briefs. It was their concern that the payment dates in the order would not accommodate the normal time required for billings to reach handlers and for the handlers to process the billings and have their payments reach the market administrator. For this reasons, they asked that any late-payment charge not apply until several days after the due date of the payment.

On the basis of a hearing held in September 1976 for the New York-New Jersey market, several changes were made in payment dates prescribed by the order.[7] These changes, in part, require that payments by handlers to the market administrator be received by the market admintrator no later than the 21st day of the month rather than by the 18th day. This extended period should provide a reasonable time for billings to reach handlers and for handlers to get their payments to the market administrator. Moreover, the order changes resulting from the September 1976 hearing should accommodate those occasions when the date by which payments to the market administrator are due falls on a weekend or holiday. When this happens, the due date of the payment would be the next day that the market administrator's office is open for business.

Under these new arrangements, there would would appear to be no necessity for a grace period before applying the late-payment charge. It must be recognized that with a grace period handlers actually would have little incentive to have their payments arrive at the market administrator's office prior to the end of the grace period, even though the due date actually was a few days earlier.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the first day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The additional late-payment charge would apply not only to the original obligation but also to any unpaid late-payment charges previously assessed.

At the time the adopted provisions become effective, there may be handlers with obligations already overdue. To the extent of any remaining unpaid balance on the 22nd day of the month in which the amendments adopted herein become effective, the newly-adopted late-payment charge should apply even though the obligation was incurred prior to the institution of the charge under the order.

The order should not provide for any late-payment charge on payments to handlers from the producer settlement fund by the market administrator. There are no circumstances in which the market administrator would not promptly disperse payments to handlers from the producer settlement fund except when the fund is insolvent because of substantial delinquencies in payments to the fund by other handlers. The order provides that in this circumstance the market administrator shall reduce uniformly his payments to handlers and shall complete his payments as soon as the necessary funds are available. The order also provides that when a handler has not received full payment from the market administrator he in turn may reduce pro rata his payments to producers by the amount of the under-payment. Thus, under any situation in which the market administrator is late in paying handlers, the handlers are excused from paying the deficit to producers until the market administrator completes his payments. Hence, there is no reasonable basis for handlers to be the beneficiaries of a late-payment charge imposed upon the market administrator.

Certain handlers urged in their brief that the market administrator be required to pay interest on money that is refunded to handlers on the basis of legal proceedings, or for other reasons. Since the merits of this particular issue were not explored at the hearing, no action should be taken on the handlers' request.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the New York-New Jersey marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1002.22(m), a new subparagraph (3) is added to read as follows:

§ 1002.22 Additional duties of the market administrator.

* * * * *

(m) * * *

(3) For the purpose of allocating receipts from other Federal order plants under § 1002.45(a)(12) and the corresponding step of § 1002.45(b), his estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.

2. In § 1002.41(c), subparagraphs (7) and (8) are revised and new subparagraphs (9), (10), and (11) are added to read as follows:

§ 1002.41 Classes of utilization.

* * * * *

(c) * * *

(7) In shrinkage allocated to Class II pursuant to § 1002.42;

(8) In skim milk represented by the nonfat solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1002.15;

(9) Contained in fluid milk products that are disposed of for animal feed;

(10) Contained in fluid milk products that are dumped, if the market administrator is notified in advance and is given the opportunity to verify such disposition; and

(11) Contained in fluid milk products that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond his control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

3. In § 1002.45(a), subparagraph (12) is revised to read as follows:

[7] Official notice is taken of the Assistant Secretary's decision on proposed amendments to the New York-New Jersey order that was issued on January 19, 1977 (42 FR 4471).

§ 1002.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraphs (2) and (10) of this paragraph:

(i) Subject to the provisions of subdivisions (ii), (iii), and (iv) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class II milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1002.22(m)(3); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II milk exceeding the pounds of skim milk remainnig in Class II milk at all such plants, the pounds of such excess shall be subtracted pro rata from the pounds of skim milk remaining in Class I–A milk and Class I–B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to subdivisions (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from Class II milk that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class II milk shall be increased (to the extent of available utilization in such class at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I–A milk and Class I–B milk combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to subdivisions (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from Class I–A milk or Class I–B milk that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II milk shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in reverse direction by a like amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

* * * * *

§ 1002.50a [Amended]

4. In § 1002.50a(a), the number "$2.40" is changed to "$2.25."

5. In § 1002.51, paragraph (c) is revised to read as follows:

§ 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

[In cents per hundredweight]

A Freight zone (miles)	B Class I–A and I–B	C Class II
1–10	+36.0	+8
11–20	+34.2	+8
21–25	+32.4	+8
26–30	+32.4	+7
31–40	+30.6	+7
41–50	+28.8	+7
51–60	+27.0	+6
61–70	+25.2	+6
71–75	+23.4	+6
76–80	+23.4	+5
81–90	+21.6	+5
91–100	+19.8	+5
101–110	+18.0	+4
111–120	+16.2	+4
121–125	+14.4	+4
126–130	+14.4	+3
131–140	+12.6	+3
141–150	+10.8	+3
151–160	+9.0	+2
161–170	+7.2	+2
171–175	+5.4	+2
176–180	+5.4	+1
181–190	+3.6	+1
191–200	+1.8	+1
201–210	0	0
211–220	−1.5	0
221–225	−3.0	0
226–230	−3.0	−1
231–240	−4.5	−1
241–250	−6.0	−1
251–260	−7.5	−2
261–270	−9.0	−2
271–275	−10.5	−2
276–280	−10.5	−3
281–290	−12.0	−3
291–300	−13.5	−3
301–310	−15.0	−4
311–320	−16.5	−4
321–325	−18.0	−4
326–330	−18.0	−5
331–340	−19.5	−5
341–350	−21.0	−5
351–360	−22.5	−6
361–370	−24.0	−6
371–375	−25.5	−6
376–380	−25.5	−7
381–390	−27.0	−7
391–400	−28.5	−7
401 and over	−30.0	−8

* * * * *

6. Section 1002.55 is revised to read as follows:

§ 1002.55 Transportation credit on bulk unit pool milk.

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

7. In § 1002.71, a new paragraph (b–1) is added to read as follows:

§ 1002.71 Computation of the uniform price.

* * * * *

(b–1) Subtract an amount computed by multiplying the quantity of pool milk delivered directly from farms to pool plants and partial pool plants that was not put into a tank truck prior to such delivery, by a rate per hundredweight that is equal to the rate specified in § 1002.55.

* * * * *

8. In § 1002.80(a), subparagraphs (2) and (3) are revised and a new subparagraph (4) is added to read as follows:

§ 1002.80 Time and rate of payments.

(a) * * *

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk;

(3) For milk received in a bulk tank unit and for which transportation was provided by the handler or at his expense, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge of up to 15 cents per hundredweight for any farm-to-first plant transportation costs for which the handler was not reimbursed through the transportation credit pursuant to § 1002.55, except that the deduction and the transportation credit combined shall not exceed the actual transportation costs incurred. Any such deduction must be made by the handler not later than the date on which the producer is required to be paid for such milk. If authorization for such deduction is canceled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler; and

(4) For pool milk delivered directly from a farm to a pool plant or a partial pool plant that was not put into a tank truck prior to such delivery, the handler shall pay to the producer an additional amount computed by multiplying the quantity of such milk by a rate per hundredweight that is equal to the rate specified in § 1002.55.

* * * * *

§ 1002.82b [Amended]

* * * * *

9. In § 1002.82(b), the word "five" is changed to "15."

10. In § 1002.87, paragraph (a) is revised to read as follows:

§ 1002.87 Handler's pool debit or credit.

* * * * *

(a) Add the amounts computed as follows:

(1) Multiply the quantity of pool milk received by each handler from dairy farmers by the uniform price; and

(2) Multiply the quantity of pool milk received by the handler at a pool plant or partial pool plant directly from farms that was not put into a tank truck prior

to delivery by a rate per hundredweight that is equal to the rate specified in § 1002.55.

* * * * *

11. A new § 1002.88a is added to read as follows:

§ 1002.88a Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1002.85 and 1002.90 shall be increased 1 percent on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.

NOTE.—The Agricultural Marketing Service has determined that this document contains a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107 and certifies that an inflation impact statement has been prepared.

Signed at Washington, D.C., on April 5, 1977.

WILLIAM T. MANLEY,
Acting Administrator.

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